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91-1278

NO. (2)

Supreme Court, U.S.
FILED
FEB 3 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1991

DR. MARK FELDMAN, PRO SE,

Petitioner,
vs.

STEPHEN GLUCROFT, M.D., STEPHEN GLUCROFT, M.D., P.A., JOEL DENNIS, M.D., JOEL DENNIS, M.D., P.A., LLOYD MORIBER, M.D., LLOYD MORIBER, M.D., P.A. MELVYN DRUCKER, M.D., MELVYN DRUCKER, M.D., P.A., KENNETH HODOR, M.D., KENNETH HODOR, M.D., P.A., ROBERT S. ENNIS, M.D., ROBERT S. ENNIS, M.D., P.A., HUGH UNGER, M.D., HUGH UNGER, M.D., P.A., and ORTHOPEDIC ASSOCIATES, P.A.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FROM A JUDGMENT FROM THE SUPREME COURT OF FLORIDA

DR. MARK FELDMAN, PRO SE,

15529 Bull Run Road
Miami Lakes, Florida 33014
(305) 557-8600

PETITIONER IN PRO SE

APPENDIX VOL I

APPENDIX A:

ORDER OF SUPREME COURT OF FLORIDA OF 11/5/91 WHICH DENIED PETITIONER'S PETITION FOR CERT.

APPENDIX B:

ORDER OF FLORIDA THIRD DISTRICT COURT OF APPEALS OF 7/11/91 DENYING MOTION FOR REHEARING

APPENDIX C:

OPINION OF FLORIDA THIRD DISTRICT COURT OF APPEALS OF 5/28/91 AFFIRMING SUMMARY JUDGMENT

APPENDIX D:

OPINION OF FLORIDA SUPREME COURT OF 2/4/88, CITED 522 So.2d 798 (FLA.1988) REMANDING CASE TO TRIAL COURT TO ALLOW AMENDED COMPLAINT

APPENDIX E:

PETITIONER/PLAINTIFF'S SECOND AMENDED COMPLAINT PERSUANT TO OPINION OF THE FLORIDA SUPREME COURT

APPENDIX F:

OPINION OF FLORIDA THIRD DISTRICT COURT OF APPEALS OF 11/28/89, CITED AT 553 So.2d 282 (3DCA 1989) DENYING CERT. ON THE APPLICATION OF BOND POSTING REQUIREMENT

APPENDIX G:

EXCERPTS OF DEPOSITION TAKEN FOR TRIAL OF PETITIONER/PLAINTIFF'S EXPERT DR. SCHOENHAUS 8/8/90

APPENDIX H:

A COMPENDIUM OF STATE PEER REVIEW IMMUNITY LAWS

APPENDIX I:

DEPOSITION OF PLAINTIFF'S WITNESS DR. ROBERT RASKIN TAKEN FOR TRIAL 7/27/90

APPENDIX A

SUPREME COURT of FLORIDA

TUESDAY, NOVEMBER 5, 1991

MARK FELDMAN, PRO SE

Petitioner,

CASE NO. 78,390

v.

STEPHEN GLUCROFT, ET AL.,

DISTRICT COURT OF APPEAL, 3RD DISTRICT NO. 90-2076

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

OVERTON, Acting C.J., MCDONALD, BARKETT, KOGAN and HARDING, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

BH
CC: Hon. Louis J. Spallone, Clerk
Hon. Marshall Ader, Clerk
Hon. Jack Turner, Judge

Dr. Mark Feldman, Miami Lakes
Dan Paul, Esquire
Frank Burt, Esquire
Irma T. Solares, Esquire

APPENDIX B

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1991

JULY 11, 1991

DR. MARK FELDMAN, CASE NO. 90-02076

Appellant (s),

vs.

STEPHEN GLUCROFT, et al., LOWER TRIBUNAL NO. 84-8615

Appellee (s)

Upon consideration, appellant's motion for rehearing is hereby denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court Of Appeal,
Third District

cc: Dr. Mark Feldman
Homer Marlow
/NB
Dan Paul
Jay Cooper

APPENDIX C

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEARINGS
MOTION AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT

COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1991

DR. MARK FELDMAN,

Appellant,

VS. CASE NO. 90-2076

STEPHEN GLUCROFT, M.D., JOEL B. DENNIS, M.D., LLOYD A. MORIBER, M.D., MELVYN G. DRUCKER, M.D., KENNETH HODOR, M.D., ROBERT S. ENNIS, M.D., HUGH UNGER, M.D., and ORTHOPEDIC ASSOCIATES, P.A.,

Appellees.

Opinion filed May 28, 1991.

An Appeal from the Circuit Court for Dade County, Jack Turner, Judge.

Dr. Mark Feldman, in proper person.

Jordan, Schulte & Burchette and Dan Paul and Frank Burt and Irma T. Solares, for appellees.

Before HUBBART, BASKIN and COPE, JJ.

PER CURIAM.

Dr. Mark Feldman appeals from a final summary judgement in favor of defendants We affirm.

The facts of this case are stated in **Feldman v. Glucroft,** 522 So.2d 798, 800 (Fla. 1988), in which the Florida Supreme Court held that section 768.40, Florida Statutes (1983), "allows a defamation action against a committee member or health care provider when the plaintiff can establish extrinsic evidence of malice or fraud." The court directed that the district court of appeal "remand this cause to the trial court with directions that the plaintiff be allowed to file an amended complaint under the principles and restrictions expressed in this opinion." Feldman, 522 So.2d at 800. On remand, Feldman filed an amended complaint realleging the defamation count and alleging additional causes of action arising from the same set of facts.

The trial court granted summary judgment in favor of defendants as to the additional counts. Defendants filed a subsequent motion for summary judgment on the defamation count, contending that Feldman failed to allege extrinsic evidence of malice or fraud. The trial court entered final judgement in favor of defendants. Feldman filed an appeal.

The record supports the trial court's determination that the amend complaint did not allege extrinsic evidence of malice or fraud. The complaint states that " (t)he fact that the Defendants... opposed granting medical staff privileges to the Plaintiff without good cause arbitrarily and capriciously in the first instance and later curtailed the Plaintiff's privilege to perform the celastic implant

procedure arbitrarily and capriciously and without good cause is extrinsic evidence of malice toward the Plaintiff . . . " (Emphasis supplied).

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However, those allegations established defendants' opposition to and curtailment of Feldman's hospital privileges only in privileged peer review committee proceedings where "(t)he shield of confidentiality protects what is presented or spoken to the committee at its meetings." Feldman, 522 So.2d at 801. Feldman failed to allege the existence of the requisite extrinsic evidence to overcome the statutory privilege afforded defendants. 768.40, Fla. Stat. (1983).

The documents attached to the amend complaint were either privileged committee documents or did not demonstrate malice or fraud. Defendants were therefore entitled to judgment as a matter of law.

As to the additional counts, the trial court correctly found that such counts were outside the supreme court mandate. The supreme court determined that "the summary judgment should be vacated to allow the plaintiff an opportunity to allege extrinsic malice or fraud," and that the amend complaint may be filed "under the principles and restrictions expressed in this opinion." Feldman, 522 So.2d at 801. The amended complaint did not adhere to the supreme court mandate. Thus, the trial court did not err in entering summary judgment

on the additional counts.

Appellant's remaining points lack merit.

Affirmed.

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APPENDIX D

798 Mark H. Feldman, Petitioner

v.

Stephen GLUCROFT, M.D., et al., Respondents.

No. 68920.

Supreme Court of Florida

Feb. 4, 1988.

Rehearing Denied April 28, 1988.

Podiatrist brought defamation action against members of medical review committee. The Circuit Court, Dade County, Jack M. Turner, J., granted defendants' motion for summary judgment, podiatrist appealed. The District Court of Appeal, Schwartz, C.J., 488 So.2d 574, affirmed, and certified questions to Supreme Court. The Supreme Court, Overton, J., held that statute protecting

records and proceedings of medical review committee from discovery and use in civil action arising out of matters reviewed by the committee does not totally abolish defamation action arising from information furnished to medical review committee; statute allows defamation action against committee member or health care provider when plaintiff can establish extrinsic evidence of malice or fraud.

Remanded with directions.

Grimes, J., filed special concurring opinion.

Shaw, J., dissented with opinion.

Ehrlich and Barkett, JJ., dissented.

Libel And Slander 34, 51(1)

Statute protecting records and proceedings of medical review committee

from discovery and use in civil action arising out of matters reviewed by the committee does not totally abolish defamation action arising from information furnished to medical review committee; statute allows defamation action against committee member or health care provider when plaintiff can establish extrinsic evidence of malice or fraud. West's F.S.A. 766.40(2, 4).

Mark H. Feldman, D.P.M., in pro. per.

Dan Paul, Franklin G. Burt and Victoria L. Baden of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, Miami, for respondents.

Charles C. Powers of Charles-C. Powers, P.A., West Palm Beach, amicus

curiae for the Academy of Florida Trial Lawyers.

Emil C. Marquardt, Jr. of McMullen, Everett, Logan, Marquardt & Cline, P.A., Clearwater, amicus curiae for The Florida Hosp. Ass'n and The Florida Medial Ass'n.

Henry H. Raattama, Jr. and Edwart T. O'Donnell of Mershon, Sawyer, Johnston, Dunwody & Cole, Miami, amicus curiae for South Florida Hosp. Ass'n.

Joseph W. Little, Gainesville, amicus curriae.

OVERTON, Justice

This is a petition to review **FELDMAN** v. **GLUCROFT**, 488 So.2d 574 (Fla. 3d DCA 1986), in which the Third District Court of Appeal held that a defamation action could not be maintained against medical review committee members and the hospital

they serve due to the privilege established by section 768.40(4), Florida Statutes (1983). The district court certified the following questions to be of great public importance:

1. Does section 768.40(4) totally abolish a defamation claim arising in proceedings before medical review committees?

2. If so, is section 768.40(4) invalid as in conflict with Article I, section 21, Florida Constitution?

Id. at 575. We have jurisdiction, article V, section 3(b)(4), Florida Constitution. We answer the first question with a qualified "no" and find a defamation claim arising under the 1983 statute is not totally abolished since a plaintiff

may proceed with such an action if he or she can establish extrinsic evidence of malice or fraud. The second question is rendered moot since we find no total abolishment of a defamation claim. We approved this legislation, and its legislatively determined need, in our recent decision in *HOLLY v. AULD*, 450 So.2d 217 (Fla. 1984). For the reasons expressed, we approve in part and quash in part the district court's decision.

The relevant portion of the record contains the following facts. Dr. Feldman is a licensed podiatrist practicing in Dade County, Florida, and had surgical privileges at Parkway General Hospital. As part of his practice, Dr. Feldman performed an arthroereisis procedure on a child to

repair a "flatfoot" deformity. In 1979, Dr. Feldman filed a civil action in United States District Court, unrelated to the case at bar, asserting federal antitrust and constitutional claims against eighty-five defendants. During the federal antitrust action, Dr. Feldman discovered what he considered a defamation of him by a medical review committee in its determination not to allow the above-described surgical procedure by any podiatrist at Parkway General Hospital.

On March 8, 1984, Dr. Feldman filed a three-count pro se complaint that sets forth the basis of this proceeding. Counts I and II alleged that respondents libeled, slandered, defamed, and/or placed him in a false light by stating

that he had performed an experimental surgical procedure on a child. Feldman also alleged respondents violated his due process and equal protection rights under the United States and Florida constitutions by revoking his privilege to perform the procedure at Parkway General. In particular, Dr. Feldman alleged that the respondents initiated the internal review of the surgical procedure and determined the procedure was experimental without his knowledge. He asserted he was not given notice of the internal review or permitted to explain or defend the procedure, in violation of Parkway Hospital bylaws. Dr. Feldman also alleged respondents used the committee report at Parkway to deny

him privileges at North Miami General Hospital.

The trial court refused to compel production of the notes and records of all orthopedic staff committee meetings at Parkway General concerning Dr. Feldman and the surgical procedure. The trial court ruled that such matters were privileged under section 768.40(4), Florida Statues (1983), and rejected Dr. Feldman's argument that 768.40 is unconstitutional. The trial court rendered final summary judgment in favor of respondents on all counts. The district court affirmed the trial court on the ground that no such action may be maintained under 768.40(4), as interpreted by this Court in *HOLLY* v.

AULD. 450 So.2d 217 (Fla.1984). The district court stated:

> [W]e think it clear from the *Holly* case, particularly when read in the light of Justice Shaw's dissenting opinion-which does directly treat the point-that the language of the statute creates an absolute privilege and means that any existing defamation action has been totally abolished.

FELDMAN v. GLUCROFT, 468 So.2d at 575.

Question I: Abolition of a Defamation Claim by Section 768.40(4)

We disagree with the Third District's interpretation that section 768.40(4), Florida Statutes (1983), totally abolishes a defamation action arising from information furnished to a medical review committee. We find the

1983 statute, rather than totally abolishing the cause of action, adds an additional restrictive element to this cause of action. The relevant portion of section 766.40, Florida Statutes (1983), provides:

> (2) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed medical review committee... *if the committee member or health care provider acts without malice or fraud.* The immunity provided to members of a duly appointed medical review committee shall apply only to actions by providers of health services, and in no way shall this section render any

> medical review committee immune from any action in tort or contract brought by a patient or his successors or assigns.
>
> ...
>
> (4) The proceedings and records of committees as described in the preceding subsections shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee...
>
> (Emphasis added.)*

Considering these provisions, it is evident that the statute allows a defamation action against a committee member or health care provider when the

plaintiff can establish extrinsic evidence of malice or fraud. It is clear that subsection (4) shields the contents of medical review proceedings from discovery. that requirement does not, however, restrict obtaining evidence of malice or fraud from testimony or documents which are not part of the record of those proceedings.

We considered the intent and purpose of this legislation in *Holly* and concluded that the legislature had a clear public need and justifiable basis for creating this limited restriction in the area of health care. We stated:

In an effort to control the escalating cost of health care in the state, the legislature deemed it wise to encourage a degree of self-regulation by

the medical profession through peer review and evaluation. The legislature aiso recognized that meaningful peer review would not be possible without a limited guarantee of

*The 1983 version of the statue has been modified by section 768.40, Florida Statutes (1985). The 1985 statute embodies many of the same elements as the 1983 version with a few note-worthy changes; specifically, subsection (2) of the 1983 statute has been modified and appears in the 1985 version as section 768.40(3)(a):

> There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed medical review committee, or any health care provider

furnishing any information, including information concerning the prescribing of substances listed in s. 893.03(2), to such committee, or any person, including any person acting as a witness, incident reporter to, or investigator for, a medical review committee, for any act or proceeding undertaken or performed within the scope of the functions of any such committee if the committee member or health care provider acts without intentional fraud.

Section 768.40(3)(a), Florida Statues (1985) (empnasis added). Additionally, subsection (4) of tne 1983 statue was subsequently modified and appears as the following subsection (5):

The investigations, proceedings, and records of a committee as described in

the confidentiality for the information and opinions elicited from physicians regarding the competence of their colleagues.

...A doctor questioned by a review committee would reasonably be just as reluctant to make statements, however truthful or justifiable, which might form the basis of a defamation action against him as he would be to proffer opinions which could be used against colleague in a malpractice suit. The discovery privilege of subsection (4) was clearly designed to provide that degree of confidentiality necessary for the full, frank medical peer evaluation which the legislature sought to encourage. Neither the language of the statute, nor the legislative intent discernable therefrom,

admits of an interpretation which would limit the discovery privilege to medical malpractice actions and would preclude its application to defamation actions.

Inevitably, such a discovery privilege will impinge upon the rights of some civil litigants to discovery of information which might be helpful, or even essential, to their causes. We must assume that the legislature balanced this potential detriment against the potential for health.

> preceding subsections shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such

committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who

> testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of said committee hearings.

Section 768.40(5), Florida Statues (1985).

> care cost containment offered by effective self-policing by the medical community and found the latter to be of greater weight.

450 So2d at 219-20 (footnote omitted)

We find the language of subsection (2) allows a defamation action when it can be established that the committee

member acts maliciously or fraudulently. We agree with the Third District Court of Appeal's interpretation of HOLLY expressed in PARKWAY GENERAL HOSPITAL, INC. v. ALLINSON, 455 So.2d 123 (Fla. 3d DCA 1984). In construing HOLLY, the Parkway court held the subject records and statements of the committee were absolutely privileged and immune from discovery. The court cautioned that its determination does not preclude a plaintiff from presenting extrinsic evidence of malice or fraud from sources such as "documents or records otherwise available from original sources [which] are not immune from discovery," nor does the statute prevent anyone who participates in a review committee proceeding from testifying separately as

to matters within his or her knowledge. Id. at 126. The shield of confidentiality protects what is presented or spoken to the committee at its meetings. If that information is available from other than committee sources, then it may be used in a defamation action, which must be based on malice or fraud under the 1983 statute and intentional fraud under the present statute. Under these circumstances, the cause of action has not been totally abolished. This type of immunity is not unusual. There is an absolute, rather than a qualified, immunity from defamation actions in all judicial and legislative hearings; moreover, this type of immunity applies in many other professional, licensing, and administrative proceedings. Seem e,g,m

McNAYR v. KELLY, 185 So.2d 428, 431 (Fla. 1966) (statements of public officials in their official capacity); ROBERTSON v. INDUSTRIAL INSURANCE CO., 75 So.2d 198 (Fla.1954)(statements made in license revocation proceedings before the Insurance Commissioner); LLOYD v. HINES, 474 So.2d 376 (Fla. 1st. DCA 1985) (statements of state law enforcement agent as witness in criminal trial); BELL v. GELLERT, 469 So.2d 141 (Fla. 3d DCA 1985) (statements made in labor grievance complaint which were relevant to that complaint); FAITH v. WAKEMAN, 385 So.2d2 (Fla. 4th DCA 1980)(compelled testimony before a legislative committee); STONE v. ROSEN, 348 So.2d 387 (Fla. 3d DCA 1977) (absolute privilege of citizen to make

complaint against Florida Bar member); **SEIDEL v. HILL**, 264 So.2d. 81 (Fla. 1st DCA 1972) (statements introduced in quasi-judicial proceedings such as worker's compensation proceedings); **GREEN v. HOIRIIS**, 103 So.2d 226 (Fla. 3d DCA 1958)) (statements made in connection with unemployment compensation proceedings). The justification for the immunity in these circumstances i that the necessary information could not otherwise be obtained without this protection. We accept the legislative determination that, without this type of qualified immunity, a viable health care peer review process would be difficult, if not impossible, to maintain. We concluded that section 768.40, Florida Statutes (1983), does not totally abolish

the defamation cause of action. As a result of this holding, we need to address the second question.

In this instant case, we find the trial court properly denied the discovery request, but find that the summary judgment should be vacated to allow the plaintiff an opportunity to allege extrinsic malice or fraud. Accordingly, the district court of appeal is directed to remand this cause to the trial court with directions that the plaintiff be allowed to file an amended complaint under the principles and restrictions expressed in this opinion.

It is ordered.

McDONALD, C.J. and KOGAN, J., concur.

GRIMES, J., concurs specially with an opinion.

SHAW, J., dissents with an opinion.

EHRLICH and BARKETT, JJ., dissent.

GRIMES, Justice, specially concurring.

It may be that there will be few circumstances in which a complaining party can successfully prosecute a lawsuit in the face of the limitations of the statue. However, I concur in the opinion, even if the statue has the practical effect of barring defamation actions against medical review committees.

In the first place, I am not at all certain that the "access to courts" provision of the Florida Constitution, article, section 21, is being abolished.

At the most, the legislature simply decided to confer an absolute privilege against liability upon certain persons under certain circumstances. The majority opinion refers to many other examples of absolute privilege which have been sustained in Florida.

Even if the statute is construed as abolishing a cause of action, it can be sustained under **KLUGER v. WHITE**, 281 So.2d 1 (Fla. 1973), as the result of a legislative determination of overwhelming public necessity. The limitation upon discovery and introduction into evidence of the proceedings and records of medical review committees was first enacted in chapter 73-50, Laws of Florida. The preamble to that statue reads as follows:

WHEREAS, the Legislature is deeply concerned over the rising costs of health insurance which are directly related to the costs of hospital and medical services and increasing problems in the area of medical malpractice insurance; and

WHEREAS, the various health services, professional societies and associations in the State of Florida are promulgating programs and establishing committees for the purpose of reviewing standards of care, utilization and expense in the rendering of health services in an effort to deter or eliminate some of the causes of the increased claims and costs of providing health services and to provide a

statistical base for further analysis, study and recommendations, and

WHEREAS, the Legislature recognizes the advisability of immunity for peer review committees so that the medical profession can explore over-utilization of medical services, improper charging for medical services, and acts of malpractice in order that it can have better control over its members and experience rate its physicians for malpractice coverage.

Ch. 73-50, Laws of Fla. Hence, it is evident that in order to improve the quality of medical services, the legislature has perceived an overwhelming need that medical review committees

function without fear of retaliation. As this Court noted in HOLLY v. AULD, 450 So.2d 217, 220 (Fla.1984):

> Inevitably, such a discovery privilege will impinge upon the rights of some civil litigants to discovery of information which might be helpful or even essential, to their causes. We must assume that the legislature balanced this potential detriment against the potential for health care cost containment offered by effective self-policing by the medical community and found the latter to be of greater weight. It is precisely this sort of policy judgment which is exclusively the province of the legislature rather than the courts.

SHAW, Justice, dissenting.

I dissent for the reasons set forth in my dissent to **HOLLY v. AULD**, 450 So.2d 217 (Fla.1984). Despite the protests to the contrary, it is obvious that the majority decisions here and in the **HOLLY** create an absolute bar to defamation actions based on proceedings before medical review committees and thus conflict with article I, section 21, of the Florida Constitution. Both certified questions should be answered in the affirmative.

APPENDIX E

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CASE NUMBER: 84-08615 Judge Turner

DR. MARK FELDMAN, PRO SE,

Plaintiff,

vs.

STEPHEN GLUCROFT, M.D., STEPHEN GLUCROFT, M.D., P.A., JOEL DENNIS, M.D., JOEL DENNIS, M.D., P.A., LLOYD MORIBER, M.D., LLOYD MORIBER, M.D., P.A. MELVYN DRUCKER, M.D., MELVYN DRUCKER, M.D., P.A., KENNETH HODOK, M.D., KENNETH HODOR, M.D., P.A., ROBERT S. ENNIS, M.D., ROBERT S. ENNIS, M.D., P.A., HUGH UNGER, M.D., HUGH UNGER, M.D., P.A., and ORTHOPEDIC ASSOCIATES, P.A.,

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PLAINTIFF'S
SECOND AMENDED COMPLAINT

COMES NOW the plaintiff, DR. MARK FELDMAN, Pro Se, sues Defendants and states:

1. This is an action for damages in excess of Five Thousand Dollars ($5.000.00).

2. Plaintiff, DR. MARK FELDMAN, is and was at all times material herein a resident of Dade County, Florida.

3. At all times material herein, DR. MARK FELDMAN was fully trained and licensed by the State of Florida to practice as a podiatrist anywhere within the jurisdiction of the State of Florida.

4. At all times material herein, STEPHEN GLUCROFT, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and further at all times material herein he was an employee or agent of STEPHEN GLUCROFT, M.D., P.A. acting in the course and scope of said employment.

5. At all times material herein, JOEL DENNIS, M.D. was licensed by the

State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and further at all times material herein he was an employee or agent of JOEL DENNIS, M.D., P.A. acting in the course and scope of said employment.

6. At all times material herein, LLOYD MORIBER, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and futher at all times material herein he was an employee or agent of LLOYD MORIBER, M.D., P.A. acting in the course and scope of said employment.

7. At all times material herein, MELVYN DRUCKER, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the

State of Florida as an orthopedic surgeon and further at all times material herein he was an employee or agent of MELVYN DRUCKER, M.D., P.A. acting in the course and scope of said employment.

8. At all times material herein, KENNETH HODOR, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and further at all times material herein he was an employee or agent of KENNETH HODOR, M.D., P.A. acting in the course and scope of said employment.

9. At all times material herein, ROBERT S. ENNIS, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and further at all times

material herein he was an employee or agent of ROBERT S. ENNIS, M.D., P.A. acting in the course and scope of said employment.

10. At all times material herein, HUGH UNGER, M.D. was licensed by the State of Florida to practice as a medical doctor and practiced in the State of Florida as an orthopedic surgeon and further at all times material herein he was an emoloyee or agent of HUGH UNGER, M.D., P.A. acting in the course and scope of said employment.

11. At all times material herein, Defendants, STEPHEN GLUCROFT, M.D., Individually and STEPHEN GLUCROFT, M.D., P.A., JOEL DENNIS, M.D., Individually and JOEL DENNIS, M.D., P.A., LLOYD MORIBER, M.D., Individually, and LLOYD MORIBER, M.D., P.A. MELVYN DRUCKER, M.D.,

Individually, and MELVYN DRUCKER, M.D., P.A., KENNETH HODOR, M.D., Individually, and KENNETH HODOR, M.D., P.A., ROBERT S. ENNIS, M.D., Individually, and ROBERT S. ENNIS, M.D., P.A., HUGH UNGER, M.D., Individually, and HUGH UNGER, M.D., P.A. were employed by or were agents of ORTHOPEDIC ASSOCIATES, P.A. and were acting in the course and scope of their employment or agency for said P.A., and through ORTHOPEDIC ASSOCIATES, P.A. they acted in concert and executed great economic influence.

12. That podiatry is that branch of medical science that concerns itself solely with treatments of the foot and ankle including surgery, and the practice of podiatry is authorized in the State of Florida pursuant to Florida Statutes Chapter 461 et seq.

13. That the practice of medicine is regulated by the State of Florida pursuant to Florida Statutes 458 et seq. and the practice of orthopedic surgery is a specialty within the general practice of medicine which specialty concerns itself with treatment of maladies involving the bones, joints, and muscles including surgery and this includes treatment of the foot and ankle such that it can be said that in this area orthopedic surgery and podiatry overlap.

COUNT I

14. All introductory paragraphs are realleged and incorporated herein by this reference.

15. The individual Defendant physicians were at all times material herein members of the medical staff of Parkway General Hospital and North

Miami General Hospital, both of which are general hospitals located in North Miami, Florida.

16. Each of the individual Defendants held medical staff privileges specializing in the area of orthopedic surgery at the said hospitals, Parkway General Hospital and North Miami General Hospital.

17. At all times material herein the individual Defendant M.D.s taken together comprised the Orthopedic Section of the Department of Surgery of the medical staffs at both Parkway General Hospital and North Miami General Hospital.

18. In 1975, the Plaintiff applied for medical staff privileges in the specialty of podiatry at Parkway General Hospital and North Miami General Hospital.

19. That the Orthopedic Section of the medical staff at Parkway General Hospital and at North Miami General Hospital, which were both comprised of the Defendants, recommended that the Plaintiff be granted privileges only in the most minor aspects of the practice of podiatry which could be described as minor surgery or topical treatments of the skin.

20. That the Plaintiff is competent and qualified to practice podiatry at Parkway General Hospital and North Miami General Hospital and met the requirements of the By-Laws for such practice and there was no good faith basis for the recommendation to limit privileges of the Plaintiff to minor surgery or topical treatments of the skin.

21. The recommendations of the Orthopedic Section of the medical staff of the respective hospitals were arbitrary, capricious, frivolous, and utterly devoid of any good faith criteria related to the proper practice of podiatry or the provision of health care generally.

22. That the recommendations against the application of Dr. Mark Feldman for full podiatric privileges at the respective hospitals including podiatric surgery were so devoid of any basis that it can be said they were motivated only by a malicious discrimination against podiatry and an anti-competitive intent.

23. Pursuant to By-Law procedures for review, the Plaintiff contested the limited recommendations of the Orthopedic Sections of the medical staffs of the respective hospitals regarding his applications for privileges.

24. At Parkway General Hospital, after full hearing before the Board, the Board of Trustees of that Hospital reversed or over-ruled the recommendation of the Orthopedic Section of the Department of Surgery and granted the Plaintiff full medical staff privileges in the specialty of podiatry including all podiatric surgery.

25. The recommendation from the Orthopedic Section of the Department of Surgery at North Miami Hospital was still in the process of being contested by way of hearing and appellate review in 1977 when other acts of the Defendants intervened to change the course of Plaintiff's future as hereinafter described.

26. In 1977, pursuant to the full Podiatric Surgical Medical Staff privileges granted to him at Parkway

General Hospital, Plaintiff performed a flat foot repair procedure on an 11-year old boy which involved the implantation of a celastic material in the sub-talor joint of the foot.

27. The said surgical procedure was and remains a recognized and accepted procedure within the profession of Podiatry; and it was indicated in this instance under the circumstances, performed in a competent manner and the patient enjoyed a good result.

28. Thereafter, the Orthopedic Section of the Medical Staff at Parkway General Hospital, which was made up of the individual Defendants herein, adopted a rule or regulation for the Hospital medical staff which prohibited medical staff podiatrists, which included only the Plaintiff, from performing the above referenced

celastic implant procedure for flat foot. ("A" Attached)

29. The said rule curtailing Plaintiff's privileges at Parkway General Hospital was arbitrary, capricious, frivolous, and utterly devoid of any good faith criteria related to the proper practice of podiatry or the provision of health care generally.

30. The regulation prohibiting the performance of such surgeries by a podiatrist on the medical staff at Parkway General Hospital represented a curtailment of the full medical staff privileges enjoyed by the Plaintiff at said facility.

31. After the curtailment of medical staff privileges of the Plaintiff at Parkway General Hospital in regard to the celastic implant procedure, Plaintiff's application for

medical staff privileges at North Miami General Hospital was finally denied.

32. That the actions of the Defendants in denying Plaintiff's application for full medical staff privileges at North Miami General Hospital and curtailing Plaintiff's medical staff privilege at Parkway General Hospital to perform a certain celastic implant procedure described above were frivolous, arbitrary and capricious and utterly devoid of any good cause such that the only motive for the action was a malicious discrimination against podiatry and an anti-competitive intent to injure the Plaintiff's practice of podiatry.

33. That the curtailment of Plaintiff's medical staff privileges at Parkway General Hospital by elimination of his privilege to

perform the celastic implant procedure was taken without notice of such intended action to the Plaintiff, with no opportunity to the Plaintiff to know the basis of any allegations against him, to appear and defend himself, to a fair hearing or to appellate review. ("C-1" Attached and "C-2", and "C-3")

34. That the utter lack of good cause for Defendant's actions and the failure to provide due process to the Plaintiff prior to curtailment of his medical staff privileges was in violation of F.S. 395.065 which required that denial or curtailment of privileges be only for good cause and that procedures for such action comply with the standards, outlined by the Joint Commission of Accreditation of Hospitals which Standards in turn require full due process prior to

curtailment of medical staff privileges. ("D" Attached)

35. As a direct and proximate result of the actions of the Defendants taken, without good cause, in bad faith and with malice, Plaintiff has suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss of enjoyment of life therefrom, he has lost profits from his business in the past and he has lost earning capacity in the future, he has incurred great expense for the defense of his medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory an punitive damages, costs of this action and further demands trial by jury on all issues so triable as of right.

COUNT II

36. All preceding paragraphs are realleged and incorporated herein by this reference.

37. That the curtailment of the privileges of the Plaintiff at Parkway General Hospital without notice of the charges, opportunity for hearing or appellate review were in violation of the By-Laws, Rules and Regulations of Parkway General Hospital which require such procedures prior to curtailment of medical staff privileges. ("D, E-1,-3)

38. As a direct and proximate result of the violation of the By-Laws of Parkway General Hospital, Plaintiff's medical staff privileges were curtailed at that Hospital; and that decision was communicated to North Miami General Hospital and Mount Sinai Hospital where that action was the cause of ultimate denial of his medical staff privileges at that Hospital. ("C-5" Attached F, G, H, I, J)

39. As a further direct and proximate result of the Defendants' actions in curtailing medical staff privileges of the Plaintiff at Parkway General Hospital, Plaintiff has suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss

of enjoyment of life therefrom, he has lost profits from his business in the past and he has lost earning capacity in the future, he has incurred great expense for the defense of this medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to the present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory and punitive damages, costs of this action and further demands trial by jury on all issues so triable as of right.

COUNT III

40. All introductory paragraphs and all paragraphs of Count I are realleged and incorporated herein by this reference.

41. At the meeting curtailing Plaintiff's privilege to do the celastic implant procedure, the Defendants, each and every one of them, stated, voted upon and approved a statement that the performance of the flat foot surgical procedure on the eleven-year old boy, involving the implantation of a celastic material in the sub-talor joint, was an experimental procedure. ("A" Attached)

42. The Defendants placed such statement in the records of the Orthopedic Section of the Surgical Department at Parkway General Hospital and in the records of the Orthopedic Section of the Surgical Department at North Miami General Hospital.

43. Furthermore, the Defendants caused said statement to be published to:

(a) Parkway General Hospital Executive Committee members on December 13, 1976;

(b) Parkway Medical Records and Audit Committee on February 3, 1977.

(c) Robert Raskin, M.D.

(d) Gladys Alvarez, M.D.

(e) Jordan Davis, M.D.

(f) Richard Fein, M.D.

(g) Walter Gassner, M.D.

(h) Bruce Cash, Assistant Administrator

(i) Natalie Caudill, Director, Medical Records

(j) Shelia Whitmore Medical, Care Evaluation Coordinator

(k) Wilma Smith, Assistant Director of Nursing

(l) Lorraine Flynn, Nursing Audit Chairman

(m) Sue Foley, Former Chairman, Nursing Audit Committee

(n) Ted Hirschberger, Administrative Resident

(o) Millie Lanes, Medical Staff Secretary

(p) Chairman, Department of Surgery, University of Miami, School of Medicine

(q) C. Rollins Hanlon, Director, American College of Surgeons

(r) Morton Frieman, M.D.

(s) Salvador Ginori, M.D.

(t) Bruce Julien, M.D.

(u) John Maclure, M.D.

(v) Howard Sanford, M.D.

(w) Bruce Cash, Assistant Administrator

(x) Alica Belinotti, Assistant Administrator, Nursing

(y) Jean Brierton, Assistant Medical Staff Secretary

(z) Bernard Seidenberg, M.D.

(aa) Gary Stone, M.D.

(bb) E. Wayne Christopher, Executive Director

(cc) Executive Committee, 1977, 1978

("C-4d," and "B" Attached; "C-4a," "C-4b," "C-4c")

44. The fact that the Defendants, comprising the Orthopedic Section of the Surgery Department at the two hospitals described herein opposed granting medical staff privileges to the Plaintiff without good cause

arbitrarily and capriciously in the first instance and later curtailed the Plaintiff's privilege to perform the celastic implant procedure arbitrarily and capriciously and without good cause is extrinsic evidence of malice toward the Plaintiff since there is no justification for such opposition whatsoever other than discrimination and an anti-competitive intent.

45. Plaintiff anticipates that Defendants will raise a privilege pursuant to F. S. 768.40 in this cause in regard to peer review committee records, evidence and events. Plaintiff asserts that the Statute is unconstitutional in that it conflicts with Article I, Section 21 of the Florida Constitution.

46. The statute conflicts with Florida Statutes 394.0653 et. seq. in that the Hospital licensing law which

mandates procedural and substantive due process. The State mandated hearing process makes clear that the evidence necessary for this State mandated due process be surrendered to the accused. Any impediment to this proceeding cannot stand.

47. The characterization of the procedure performed by the Plaintiff as an experimental procedure is false and defamatory of the Plaintiff in his profession.

48. As a direct and proximate result of the malicious defamatory statement of the Defendants published as described herein, the Plaintiff has suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss of enjoyment of life therefrom, he has

lost profits from his business in the past and he has lost earning capacity in the future, he has incurred great expense for the defense of his medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to the present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory and punitive damages, costs of this action and further demands trial by jury on all issues so triable as of right.

COUNT IV

49. All introductory paragraphs and Paragraphs of Count I are realleged and incorporated herein by this reference.

50. That the individual Defendants as a group comprising as is described herein, the orthopedic Sections of the Surgical Departments of the Medical Staffs of Parkway General Hospital and North Miami General Hospital taken together exercised substantially greater economic power to control the practice of orthopedics and podiatry at said hospitals than they would have acting individually.

51. That the Defendants did act in concert together at both hospitals with the intent to exercise power to blackball podiatrists, and the Plaintiff in particular, from having full podiatric surgical privileges at the said hospitals.

52. That the concerted action was taken intentionally, knowingly and without good cause and with an anti-competitive intent to deprive the Plaintiff of his livelihood.

53. As a direct and proximate result of the conspiracy to deprive the Plaintiff of his livelihood, Plaintiff has suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss of enjoyment of life therefrom, he has lost profits from his business in the past and he has lost earning capacity in the future he has incurred great expense for the defense of his medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to the present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory and punitive damages,

costs of this action and further demands trial by jury on all issues so triable as of right.

COUNT V

54. All introductory paragraphs and Paragraphs of Count I are realleged and incorporated herein by this reference.

55. At the time of the incidents described herein, the State of Florida had announced a clearly defined policy to require health care peer review and in that regard to provide a system for orderly and fair quality control within the health care professions. See F.S. Chapter 395. et. seq. and F.S. 768.40 and Rules and Regulations of the Department of Health and Rehabilitative Services Section 10D-28 et. seq.

56. That the State regulatory plan in this area was so comprehensive as to have elevated the hospital peer review process to the level of state action.

57. The Defendants herein were at all times material acting under color of state law.

58. The action of the Orthopedic Section of the medical staffs of North Miami General Hospital to deny Plaintiff's application for full podiatric privileges and the action of the Orthopedic Section of the medical staff at Parkway General Hospital to curtail Plaintiff's privilege to perform the flat foot procedure were arbitrary, capricious and without good cause in violation of Plaintiff's right to equal protection and due process.

59. The denial of notice and hearing before curtailment of Plaintiff's privileges to perform the flat foot procedure denied Plaintiff's right to due process.

60. The Defendants' actions violated Title 42 USCA Section 1983.

61. The actions of Defendants were so arbitrary, capricious and wholly lacking in any good faith basis that said actions could only have been motivated by a malicious anti-competitive intent to destroy Plaintiff's livelihood.

62. As a direct and proximate result of the Defendants wrongful acts, the Plaintiff suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss of enjoyment of life

therefrom, he has lost profits from his business in the past and he has lost earning capacity in the future, he has incurred great expense for the defense of his medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to the present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory and punitive damages, costs of this action and further demands trial by jury on all issues so triable as of right.

COUNT VI

63. All introductory paragraphs are realleged and incorporated herein by this reference.

64. That Defendants combined to and did exercise their power at two hospitals to restrain trade and commerce in this state in the redition of health care services in violation of F.S. 542.18.

65. Defendants combination as described was an attempt to monopolize a part of trade or commerce in this state, specifically the rendition of care and treatment of the foot and ankle at the two hospitals described in violation of F.S. 542.19.

66. As a direct and proximate result of the Defendants wrongful acts, the Plaintiff suffered serious damage to his reputation and he has been held up to ridicule and public contempt, he has been humiliated and suffered great mental and emotional distress and loss of enjoyment of life therefrom, he has lost profits from

his business in the past and he has lost earning capacity in the future, he has incurred great expense for the defense of his medical staff privileges as described herein and further he has lost interest on the income he would have earned in the past to the present; all of said injuries are continuing and permanent in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for threefold the damages sustained plus costs of this action and further demands trial by jury.

_____

DR. MARK FELDMAN

I HEREBY CERTIFY that a true and correct copy of the foregoing has been

mailed this 8 day of October, 1988 to: Dan Paul, Esquire, 701 Brickell Avenue, Miami, Florida 33131.

DR. MARK FELDMAN
899 N.W. 214th Street
Apartment 101
North Miami, Florida 33169
305-652-9444
305-949-1600

ORTHOPEDIC SURGERY

Joel B. Dennis, M.D.
Lloyd A. Moriber, M.D.
Melvyn G. Drucker, M.D.
Diplomates, American Board of
Orthopedic Surgery

Kenneth R. Hodor, M.D.
Robert S. Ennis, M.D.
190 Northwest 169th Street
North Miami Beach, Florida
33169
Telephone 305-682-6060

March 1, 1977

Robert Raskin, M.D., Chairman
Medical Audit & Record Committee
Parkway General Hospital
160 N.W. 170th Street
North Miami Beach, Florida

ATT: Millie Lanes

Dear Dr. Raskin:

The Orthopedic Department has gone on record as opposing experimental podiatric type procedures such as the placing of a penile silastic implant for treatment of flexible valgus flat feet.

Sincerely yours,

Joel B. Dennis, M.D., Chairman
Department of Orthopedic Surgery

"A"

PARKWAY GENERAL HOSPITAL

MEDICAL RECORDS/AUDIT COMMITTEE

March 3, 1977

A meeting of the Medical Records/Audit Committee was called to order by Robert Raskin, M.D., Chairman, at 12:00 noon on March 3, 1977. The meeting was held in the Board Room.

Present: Robert Raskin, M. D., Chairman
Lewis Dan, M. D.
Richard Fein, M. D.
Norton Freiman, M. D.
Salvador Ginori, M. D.
Bruce Julien, M. D.
John Maclure, M. D.
Howard Sanford, M.D.

Absent: Gladys Alvarez, M. D.
Jordan K. Davis, M. D. (out of to
Walter Gassner, M. D.
Bertram Grapin, M. D.
Bernard Seidenberg, M. D. (sick
Gary Stone, M. D.

Also Present: Bruce Cash, Assistant Administrator - Operations
Alicia Belinotti, Assistant Administrator - Nursing
Suzanne Foley, R. N., Admin. Supv.
Lorraine Flynn, R. N., Chairman, - Nursing Audit
Natalie Caudill, Director, Medical Records
Sheila Whitmore, Medical Care Evaluation Coordinator
Jean Brierton, Assistant Medical Staff Secretary

"B" (continues)

MINUTES: The Minutes of the previous meeting were reviewed and approved.

COMMUNICATIONS: Doctor Raskin read the responses received regarding queries sent by the Committee regarding an experimental procedure performed by a Podiatrist. In eight hospitals polled, the treatment has not been an allowable procedure. Our own Orthopedic Department has gone on record as opposing the treatment, which involves placing of a silastic implant, sub-talar joint bilateral for diagnosis of Flexible Valgus Flatfoot. It was recommend that the matter be discussed with the Doctor involved.

PARKWAY GENERAL HOSPITAL

MEDICAL RECORDS/AUDIT COMMITTEE

April 7, 1977

A meeting of the Medical Records/Audit Committee was called to order at 12:00 noon by Robert B. Raskin, M.D., Chairman, on April 7, 1977, in the Board Room.

Present: Robert Raskin, M. D., Chairman
Gladys Alvarez, M. D.
Lewis Dan, M. D.
Jordan K. Davis, M. D.
Joel Dennis, M. S.
Walter Gassner, M. D.
Bruce Julien, M. D.
Howard Sanford, M.D.
Bernard Seidenberg, M. D.
Gary Stone, M. D.

Absent: Richard Fein, M. D.
Norton Freiman, M. D.
Bertram Grapin, M. D.
John Maclure, M. D.
Salvador Ginori, M. D. (call

Also Present: E. Wayne Christopher, Executive Director
Alicia Belinotti, Assistant Administrator - Nursing
Lorraine Flynn, R. N., Chairman, - Nursing Audit
Suzanne Foley, R. N., Admin. Supervisor
Natalie Caudill, Director, Medical Records
Sheila Whitmore, Medical Care Evaluation Coordinator
Ted Hirschberger, Administrative Resident
Jean Brierton, Assistant Medical Staff Secretary

"C-1" (continues)

MINUTES: The Minutes of the previous meeting were read and approved, after full discussion of each item, as outlined below.

COMMUNICATIONS: Doctor Raskin read aloud the response received from the American College of Surgeons (Chicago, Illinois) evoked by our inquiry regarding the propriety of an experimental procedure performed by a Podiatrist (and discussed at previous meetings of the Committee). The response was somewhat laconic, stating only that: "The College does not provide specific opinions on propriety of procedures in individual instances. In eight hospitals previously polled by this Committee, the procedure had not been allowed. Our Orthopedic Department has gone on record as opposing the treatment (a silastic implant, sub-talar joint, bilateral for diagnosis of Flexible Valgus Flatfoot). Following additional discussion, motion was made that the matter be referred to the Executive Committee with this Committee's recommendation that silastic implants such as the one cited should not be allowable procedures by Podiatrists in this Hospital.

Medical Record and Audit Committee - The recommendation that "silastic implants should not be allowable procedures by Podiatrists in the hospital" was discussed and approved.

April 7, 1977

Jerome Moskowitz, M.D.
Chief of Staff
Parkway General Hospital
North Miami Beach, Florida 33169

Dear Doctor Moskowitz:

At today's meeting of the Medical Record/Audit Committee, it was suggested that the Executive Committee be advised of our recommendation regarding silastic implants.

"Motion was made that silastic implants by Podiatrists should not be an allowable procedure in the Hospital, and recommendation to this effect be forwarded to the Executive Committee."

This is the result of an experimental procedure performed by a Podiatrist of eight hospitals polled regarding the procedure, it was not permitted in any of the eight. Our own Orthopedic Department opposes the treatment.

Cordially,

Robert B. Raskin, M.D.
Chairman

cc: Credentials Committee

RBR/jb

"C-3"

PARKWAY GENERAL HOSPITAL

MEDICAL RECORDS AND AUDIT COMMITTEE

February 3, 1977

A meeting of the Medical Records and Audit Committee was called to order at 12:20 p.m. by Robert Raskin, M.D., Chairman, in the Board Room on February 3, 1977.

Present: Robert Raskin, M. D., Chairman
Gladys Alvarez, M. D.
Lewis R. Dan, M. D.
Jordan K. Davis, M. D.
Richard Fein, M. D.
Walter Gassner, M. D.

Absent: Joel Dennis, M. S. (in surgery)
Norton Freiman, M. D. (called)
Salvador Ginori, M. D. (called)
Bertram Grapin, M. D.
Bruce Julien, M. D.
John Maclure, M. D.
Bernard Seidenberg, M. D. (ill)
Gary Stone, M. D.

Also Present: Bruce Cash, Assistant Administrator
Natalie Caudill, Director, Medical Records
Mrs. Sheila Whitmore, Medical Care Evaluation Coordinator
Mrs. Wilma Smith, Assistant Director of Nursing
Mrs. Lorraine Flynn, Nursing Audit Chairman
Mrs. Sue Foley, Former Chairman, Nursing Audit Committee
Ted Hirschberger, Administrative Resident
Mrs. Millie Lanes, Medical Staff Secretary

ROBERT B. RASKIN, M.D.
Neurology P.A.

Telephone
652-2092

16800 N.W. 2nd Avenue
Suite 300
Miami, Florida 33169

February 17, 1977

Dear Doctor:

I am Chairman of Medical Records Audit Committee of Parkway General Hospital, North Miami Beach, Florida. This letter is being written in response to queries on the part of members of our Orthopedic Department regarding Celastic implant, sub-talar joint; bilateral for diagnosis of Flexible Valgus Flatfoot. This procedure was performed by a Podiatrist on a nine year old child.

The Orthopods question the ethics of performing this "experimental" or thus for unproven procedure by a Podiatrist. I would greatly appreciate your comments, feelings, etcetera regarding this issue. If you prefer, your comments will be anonymous. This is an internal matter at Parkway General Hospital and no litigation is involved.

Respectfully yours,

Robert B. Raskin, M.D.

RBR/bsd

Chairman, Department of Surgery
University of Miami School of Medicine
1700 Northwest 10th Avenue
Miami, Florida 33136

ROBERT B. RASKIN, M.D.
Neurology P.A.

Telephone
652-2092

16800 N.W. 2nd Avenue
Suite 300
Miami, Florida 33169

February 17, 1977

Dear Doctor:

I am Chairman of Medical Records Audit Committee of Parkway General Hospital, North Miami Beach, Florida. This letter is being written in response to queries on the part of members of our Orthopedic Department regarding Celastic implant, sub-talar joint; bilateral for diagnosis of Flexible Valgus Flatfoot. This procedure was performed by a Podiatrist on a nine year old child.

The Orthopods question the ethics of performing this "experimental" or thus for unproven procedure by a Podiatrist. I would greatly appreciate your comments, feelings, etcetera regarding this issue. If you prefer, your comments will be anonymous. This is an internal matter at Parkway General Hospital and no litigation is involved.

Respectfully yours,

Robert B. Raskin, M.D.

RBR/bsd

C. Rollins Hanlon, M.D., Director
American College of Surgeons
55 East Erie Street
Chicago, Illinois 60611

AMERICAN COLLEGE OF SURGEONS

Founded by Surgeons of the
United States and Canada, 1913

55 East Erie Street Chicago,
Illinois 60611
Area Code 312-664-4050

C. Rollins Hanlon, M.D., F.A.C.S.
Director

March 17, 1977

Robert B. Raskin, M.D., P.A.
16800 N.W. 2nd Avenue
Miami, Florida 33169

Dear Doctor Raskin:

The College does not provide specific opinions on propriety of procedures in individual instances, such as the one you mention. I am sorry not to be of more help.

Best wishes.

Sincerely,

C. Rollins Hanlon,
M.D., F.A.C.S.

CRH:jk

Charles Weiss, M.D. P.A.

Mount Sinai Medical Center
4300 Alton Road, Miami Beach, Florida 33140
(305) 674-2085

Chairman Department of
Orthopedics & Rehabilitation

November 9, 1978

Mr. Sidney Golden
Associate Director

Re: Dr. Mark Feldman

Dear Sid:

It has come to my attention that a Parkway Hospital patient by the name of Scott Lilien, a 7-year-old child was operated on by Dr. Feldman on July 22, 1976. His hospital chart number is 56104.

At that time it is alleged that a tendon Achilles' lengthening was done for hyper-mobile flat foot and a penile implant was placed in the sub-talar joint, a counter-indicated procedure.

Very truly yours,

Charles Weiss, M.D.

CW/11

AFFILIATE STAFF - Podiatry

Mark Feldman, D.P.M. - Based on comments from the Chief of the Division of Orthopedics, as approved by the Chairman of the Department of Surgery, it was recommended that he be reappointed to the Affiliate Staff but that his surgical privileges be withheld pending review of a chart referred to the Audit Committee. The Executive Committee did not approve the latter part of the recommendation inasmuch as privileges cannot be revoked without a hearing. It was agreed that a decision could be made after a recommendation is presented by the Audit Committee.

The Executive Committee accepted the report with the exception of the recommendation relative to Doctor Mark Feldman.

BY-LAWS

AND

RULES AND REGULATIONS

MEDICAL STAFF

PARKWAY GENERAL HOSPITAL, INC.
160 NW 170th Street
North Miami Beach, Florida 33169

American Medical International Inc.
Health Care Center

Sec. 3.70 APPEALS:

Sec. 3.71-1 In any case where the Executive Committee of the Medical Staff does not recommend reappointment or advancement mended by the Executive Committee, the Executive Director shall notify the Physician and/or Dentist concerned by certified or registered mail.

Sec. 3.71-2 At the same time, he must be advised that if he wishes a hearing, he must submit a written request to the Executive Director within ten days after personal receipt of such notice.

Sec. 3.71-3 Failure to request a hearing in writing during the prescribed time constitutes a waiver of the applicant's right to hearing and appeal.

Sec. 3.71-4 Should he exercise this privilege, he shall be given the opportunity of appearing before the Credentials Committee and the Joint Conference Committee in joint session at the next regular meeting of the Joint Conference Committee.

Sec. 3.72 After a hearing, as outlined above, the Joint Conference Committee shall make recommendations to the Governing Body, which Body shall transmit its decision to the affected Physician and/or Dentist through the Executive Director.

Sec. 3.73-1 The Governing Body shall always have the right to suspend or remove any member from the Staff or deprive any member of the Staff of the privileges of the Hospital whenever the good of the Hospital or the patients may determine it after meeting with the Executive Committee of the Medical Staff.

"E1" (continues)

("E1" continued)

Sec. 3.73-2 However, in any case in which the Governing Body takes action contrary to the Medical Staff's recommendation concerning appointments or privileges, the matter shall first be reviewed at a special meeting of the Joint Conference Committee.

Sec. 3.73-3 This meeting must be held within ten days of announcement by the President of the Medical Staff.

Sec. 3.73-4 If the issues cannot be resolved, the aggrieved party may submit within ten days a written request to the Governing Body to reconsider the matter.

Sec. 3.73-5 The Governing Body shall arrange for a hearing to be held before its Executive Committee within ten days of receipt of request and shall send notice of the date and time of the hearing by registered or certified mail to the appellant.

Sec. 3.73-6 A final decision of the Governing Body shall be rendered within ten days after the date of this hearing.

Sec. 3.73-7 A three-quarter vote of the entire Governing Body shall be required any time the recommendations of the Executive Committee of the Medical Staff regarding appointment, dismissal or suspension from the Staff are opposed by the Governing Body.

Sec. 3.74 All applicants, as well as members of the Medical Staff, consent to the release of pertinent information for any purpose set forth in these By-Laws and release from liability and agree to hold harmless any person or entity furnishing or releasing such information concerning his application or Medical Staff status.

Sec. 3.80 TEMPORARY SUSPENSION:

Sec. 3.81 The Executive Committee of the Medical Staff shall be authorized to recommend to the Governing Body that a Staff member's privileges be suspended for disciplinary purposes. The grounds for such suspension of privileges include:

A. Violations of the By-Laws, Rules and Regulations.

B. Conduct that is inimical to the Hospital and/or its Staff.

C. Notification from the State Board of Medical Examiners of the revocation or suspension of a Staff member's license.

D. Failure to complete Medical Records within a prescribed time after the discharge of a patient.

Sec. 3.82 An opportunity for the Staff member concerned to have a hearing shall be afforded as provided in Section 3.70.

Sec. 7.01 Committees shall be standing and special.

Sec. 7.01-1 The Standing Committees shall be:

A. Accreditation Committee
B. Credentials Committee
C. Disaster Control Plans Committee
D. Emergency Room Committee
E. Executive Committee
F. Infections Control Committee
G. Intensive Care Committee
H. Joint Conference Committee
I. Medical Records and Audit Committee
J. Nominating Committee
K. Patient Care Committee
L. Pharmacy Committee
M. Respiratory Therapy Committee
N. Tissue and Surgical Evaluation Committee
O. Transfusions Committee
P. Utilization Committee

Sec 7.02-2 Such Committees shall confine their work to the purposes for which they were appointed and shall report to the Executive Committee of the Medical Staff.

NORTH MIAMI GENERAL HOSPITAL

CREDENTIALS COMMITTEE

APRIL 1, 1980

The meeting was called to order at 8:15 a.m. by the Chairman Dr. Bertram Grapin.

Those present were:

Dr. Albert Cohen
Dr. Harvey Glasser
Dr. Stephen Glucroft
Dr. Bertram Grapin
Dr. Arthur Miller
Dr. Martin Rosenbluth
Mr. Robert Connors

The minutes of the previous meeting were read and approved.

I. OLD BUSINESS:

A. Request by Mark H. Feldman, D.P.M. for surgical privileges, recommended from the Department of Orthopedics. The Committee recommended that he maintain privileges as they presently are.

NORTH MIAMI GENERAL HOSPITAL

DEPARTMENT OF ORTHOPEDICS

APRIL 1, 1980

The meeting was called to order at 6:30 p.m. by the Chairman, Dr. Stephen Turbin.

See sign-in book for those members present.

Minutes of the previous meeting were approved as read.

NEW BUSINESS

The question of Podiatrist privileges was discussed. A committee including Dr. Nadler, Dr. Goldman and Dr. Ennis was created to report back to the Department their recommendations regarding privileging of Podiatrists at North Miami General Hospital and at Parkway.

There being no further business, the meeting adjourned at 7:30 p.m.

Respectfully submitted,

Barry Silverman, M.D.
Secretary,
Orthopedic Department

Stephen Turbin, M.D.,
Chairman

BS:el

A Non-Profit Community Hospital

NORTH MIAMI GENERAL HOSPITAL, INC.

1701 NE 127th Street
North Miami, Florida 33181
Telephone (305) 891-3550

June 20, 1980

Mark H. Feldman, D.P.M.
16875 N.E. 15th Avenue
North Miami Beach, Florida 33162

Dear Dr. Feldman:

At the last meeting of the Executive Committee held on June 10, 1980, the following surgical procedures were approved:

1) Incision and drainage, infected or not infected cyst.
2) Incision and drainage of furuncle.
3) Incision and drainage of abcess.
4) Drainage of onychia.
5) Drainage of hematoma.
6) Puncture aspiration of abcess.
7) Pairing or curettment of a benign lesion, or chemical cautery.
8) Biopsy of skin or sub. Q.
9) Nail avulsion.
10) Excision of nails.
11) Reconstruction of the nail bed.
12) Wound repair of the feet.
13) Cyro surgery.
14) Incision of superficial abcess.

"I" (continues)

"I" continued

15) Drainage of infected bursae.
16) Arthrocentesis.
17) Tenolysis, single open.
18) Tenotomy, sub. Q. toe.
19) Excision of ganglion.

It is the writer's responsibility to advise you of your rights to a hearing pursuant to Article VII of the Medical Staff By-Laws and to specify that you have 30 days from the receipt of this letter to request said hearing. Failure to do so within the time period shall constitute a waiver of your rights thereto.

Should we receive a request for a hearing, you will be notified within 10 days after receipt of that request of the date, time and place for a hearing.

Sincerely,

Robert O. Bruce, F.A.C.H.A.
Executive Vice President

ROB:bak
cc: President, Medical Staff

NORTH MIAMI GENERAL HOSPITAL

DEPARTMENT OF ORTHOPEDICS

JUNE 2, 1981

The meeting was called to order at 6:20 p.m. by the Chairman, Dr. Stephen Turbin.

See sign-in book for members present.

Minutes of the previous meeting were approved.

OLD BUSINESS:

Dr. Turbin presented criteria regarding podiatric privileges proposed by the subcommittee chaired by Dr. Goldman. There was a great deal of discussion regarding these proposed privileges and finally a motion was made that -

> "THE DEPARTMENT REAFFIRMS ITS PREVIOUS POSITION TO ONLY ALLOW PODIATRISTS TO PERFORM SOFT TISSUE SURGERY UNDER LOCAL ANESTHESIA ABOUT THE FOREFOOT."

Motion passed. In addition, it was moved that -

> "DR. GOLDMAN ATTEND THE EXECUTIVE COMMITTEE MEETING TO EXPLAIN THE POSITION OF THE ORTHOPEDIC DEPARTMENT IN REGARD TO GRANTING SURGICAL PRIVILEGES TO PODIATRISTS."

This motion passed unanimously.

NEW BUSINESS

A letter was presented by Dr. Turbin which had been received from Dr. Fass. This dealt with credentials of Arthroscopy. A great deal of discussion ensued, following which a motion was made -

> "THAT ALL MEMBERS OF THE DEPARTMENT WHO ARE BOARD-ELIGIBLE OR BOARD-CERTIFIED BE ALLOWED TO DO ANY ORTHOPEDIC PROCEDURES IN THE FUTURE.

This motion passed.

Mr. Drew Troeder gave a scientific presentation on a new knee instrument system for a total knee replacement.

The meeting was adjourned at 8:30 p.m.

Respectfully submitted:

Barry J. Silverman, M.D.
Secretary

BJS/adw

Regarding the development of criteria for granting surgical podiatric privileges, the Committee's consensus was to recommend support of the Department of Orthopedic's previous stand, that podiatric surgery be restricted to soft tissue surgery procedures done under local anesthesia.

There being no further business, the meeting was adjourned at 8:50 a.m.

Respectfully submitted:

David C. Hillman, M.D.
Chairman

DCH/adw